IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

OP.No. 39882 of 2002(S)

PETITIONERS:
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1. DEPUTY CHIEF COMMERCIAL MANAGER,
SOUTHERN RAILWAY, CHENNAI.

2. SENIOR DIVISIONAL COMMERCIAL
MANAGER, SOUTHERN RAILWAY,
PALGHAT DIVISION, PALGHAT.

3. UNION OF INDIA REPRESENTED BY
ITS SECRETARY, RAILWAYS,
NEW DELHI.

BY ADV. SRI.VARGHESE P.THOMAS

RESPONDENT:

P.VISWANATHAN, 24, SURMPATHI VILASAM,
ANNAIKATHU ROAD,
3RD STREET, ERODE.

BY ADV. SRI.SIBY J.MONIPPALLY

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NO.66797/2002 IN OP NO.39882/2002

DISMISSED.

SD/-
K.BALAKRISHNAN NAIR, JUDGE

SD/-
24.10.07 T.R.RAMACHANDRAN NAIR, JUDGE

APPENDIX

PETITIONER'S EXHIBITS:

EXT. P1: COPY OF THE OA WITH ANNEXURES.

EXT. P2: COPY OF REPLY STATEMENT WITH ANNEXURES.

EXT. P3: COPY OF REJOINDER WITH ANNEXURES.

EXT. P4: COPY OF THE ORDER IN O.A. NO.916/2000 DATED 14.8.2002 OF CAT, ERNAKULAM BENCH.

/TRUE COPY/

P.A. TO JUDGE

JP

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR,JJ.

O.P. NO. 39882 OF 2002-S

Dated 24th October, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioners are the respondents in O.A.No.916/2000 before the Central Administrative Tribunal, Ernakulam Bench. The said O.A was filed by the respondent herein. The case of the applicant before the CAT was as follows. He was a Commission Bearer under the catering wing of the Railways in Palakkad Division. Later, he was made a Salaried Commission Bearer. He continued in that post up to 24.1.1993. On the said date he was arrested in a criminal case. Later, the applicant was acquitted by the criminal court by judgment dated 20.9.1996. Thereafter, he moved for reinstatement in service with back wages. According to the applicant, at the relevant time, because of his involvement in the criminal case, he was kept under suspension. The Deputy Chief Commercial Manager forwarded his representation by letter dated 26.11.1997 to the Senior Divisional Manager. Since no decision was taken on that representation, he filed O.A.

No.195/2000 before the CAT, Ernakulam Bench. The Tribunal directed the Senior Divisional Manager to consider and pass orders on that representation. The said officer rejected his claim, holding that a Salaried Commission Bearer is not entitled to get the rights and privileges of a regular employee and therefore, he is not entitled to reinstatement in service. Since he was absent from work, the competent authority stopped him from work. It was also held that as there is no requirement of a Salaried Commission Bearer at Coimbatore, his request for reinstatement cannot be considered. Challenging the said order, the respondent filed the present O.A. He contended that without following the due procedure of law, he could not have been sent out of service. So, he claimed reinstatement with back wages.

2. The petitioners herein, who were the respondents in the O.A, filed a reply statement, stating that the respondent had been engaged, based on an agreement executed by him and as per the condition in that agreement his service could be dispensed with without holding any enquiry, provided his performance is found unsatisfactory. The claim of the applicant that he was suspended from service, was denied by the Railways. He remained absent and thereby violated the terms of the agreement. His services were unsatisfactory and therefore, he is not entitled to re-engagement, it was

contended. The Tribunal after hearing both sides, found that the applicant's services were terminated without following any procedure established by law. The Tribunal also found that the applicant was not given duty for the reason that he absented himself from 24.1.1993. Finally, by Ext.P4 order the Tribunal held that he is liable to be reinstated in service with effect from 14.3.1007 with continuity of service, including 50% of the back wages, which he would have earned. This Original Petition was filed, challenging Ext.P4.

3. According to the Railways, the respondent herein, who was the applicant before the Tribunal, is only a Salaried Commission Bearer and he is not entitled to get any privileges or compensation admissible to a Government Servant. He was not holding any post in the Railways. He absented himself from duty from 24.1.1993. Therefore, he is not entitled to get any relief.

4. The respondent was not allowed to do work while he was an accused in the aforesaid criminal case. Once he is acquitted, he is liable to be put back in the same position and status, in which he was on 24.1.1993. The Tribunal has rightly upheld the above entitlement of the petitioner. Therefore, we find no reason to interfere with Ext.P4.

5. The learned counsel for the Railways submitted that going by the

Tribunal's order, it may appear that the respondent is liable to be treated as a Railway servant. The said apprehension is unfounded. He has been restored only the status which he enjoyed on 24.1.1993 by the impugned order. In the result, the original petition is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/

K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

O.P. NO.39882/2002-S

JUDGMENT

24.10.2007.